Office-Supreme Court, U.S.
FILED
MAR 2 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-411

In the Supreme Court of the United States

OCTOBER TERM, 1982

NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY, PETITIONER

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

REX E. LEE
Solicitor General

LAWRENCE G. WALLACE
Deputy Solicitor General

HARRIET S. SHAPIRO
Assistant to the Solicitor General

Department of Justice
Washington, D.C. 20530
(202) 633-2217

MICHAEL N. MARTINEZ
Deputy General Counsel

PHILIP B. SKLOVER
Associate General Counsel

VELLA M. FINK
Assistant General Counsel

SUSAN BUCKINGHAM REILLY
Attorney
Equal Employment Opportunity Commission
Washington, D.C. 20506

QUESTION PRESENTED

Whether a company discriminates against male employees in violation of Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act of 1978, by providing a medical insurance plan for workers and their families that covers spouses' maternity costs less favorably than costs resulting from all other spousal illnesses or injuries.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statute and regulation involved	2
Statement	2
Summary of argument	7
Argument:	
I. Title VII prohibits employers from discriminating against males in providing spousal medical benefits	8
II. The PDA applies to all Title VII claims involving pregnancy	11
A. The plain language of the statute applies to all Title VII claims involving pregnancy	11
B. The legislative history confirms the plain meaning of the PDA	16
III. The contemporaneous administrative interpretation of the PDA is entitled to substantial judicial deference	36
Conclusion	41

TABLE OF AUTHORITIES

Cases:

Anderson v. *Upper Bucks County Area Vocational Technical School*, 30 Pa. Comm. 103, 373 A.2d 126	34
Arizona v. *California*, 373 U.S. 546	30
Baltimore & O.C.T.R.R. v. *United States*, 583 F.2d 678, cert. denied, 440 U.S. 968	37
Brooklyn Union Gas Co. v. *New York State Human Rights Appeal Board*, 41 N.Y. 2d 84, 359 N.E. 2d 393, 390 N. Y. S. 2d 884	33, 34

Cases—Continued: Page

Brown v. *GSA*, 425 U.S. 820 29
Califano v. *Goldfarb*, 430 U.S. 199 9
Chandler v. *Roudebush*, 425 U.S. 840 13
Chastang v. *Flynn & Emrich Co.*, 541 F.2d 1040..... 8
Comm's v. *Aragon*, 329 U.S. 143 36
County of Washington v. *Gunther*, 452 U.S. 161..... 17, 36
EEOC v. *Associated Dry Goods*, 449 U.S. 590..... 37
EEOC v. *Colby College*, 589 F.2d 1139 8
Espinoza v. *Farah Mfg. Co.*, 414 U.S. 86 37
Faraca v. *Clements*, 506 F.2d 956, cert. denied, 422 U.S. 1006 8
Fitzpatrick v. *Bitzer*, 519 F.2d 559, rev'd, 427 U.S. 445 8
Flora v. *United States*, 362 U.S. 145 15
Frontiero v. *Richardson*, 411 U.S. 677 9
General Electric Co. v. *Gilbert*, 429 U.S. 125.....*passim*
Los Angeles Dep't of Water and Power v. *Manhart*, 435 U.S. 702 ..... 9, 40
McDonald v. *Santa Fe Trail Transportation Co.*, 427 U.S. 273 .....8, 14-15, 17
Miller v. *Youakim*, 440 U.S. 125 37
Montello Salt Co. v. *Utah*, 221 U.S. 452 15
Nashville Gas Co. v. *Satty*, 434 U.S. 136 21
North Haven Board of Education v. *Bell*, No. 80-986 (May 17, 1982) 26
Power Reactor Development Co. v. *Int'l Union of Electrical Workers*, 367 U.S. 396 37
Ray-O-Vac v. *Dep't of Industry, Labor & Human Relations*, 70 Wis. 2d 919, 236 N.W. 2d 209..... 34
Reiter v. *Sonotone Corp.*, 442 U.S. 330 15
Rosen v. *Public Service Electric & Gas Co.*, 477 F.2d 90 8
Udall v. *Tallman*, 380 U.S. 1 37
Unemployment Comm'n v. *Aragon*, 329 U.S. 143..... 37
Union Free School District No. 6 v. *New York State Human Rights Appeal Board*, 35 N.Y. 2d 371 34
Wambheim v. *J.C. Penney Co.*, 642 F.2d 362..... 9
Weinberger v. *Weisenfeld*, 420 U.S. 636 9

Cases—Continued: Page

Wengler v. *Druggists Mutual Ins. Co.*, 446 U.S. 142 9
Zuber v. *Allen*, 396 U.S. 168 37

Constitution, statutes and regulations:

U.S. Const.:
Amend. V (Due Process Cl.) 9
Amend. XIV 9
Civil Rights Act of 1964, Title VII, 42 U.S.C. (& Supp. IV) 2000e *et seq.* 2
Section 701, 42 U.S.C. (& Supp. IV) 2000e .. 12
Section 701(k), 42 U.S.C. (Supp. IV) 2000e (k) 2, 12
Section 703, 42 U.S.C. 2000e-2 13
Section 703(a), 42 U.S.C. 2000e-2(a) 13
Section 703(a)(1), 42 U.S.C. 2000e-2(a)(1) .. 10
Section 706, 42 U.S.C. 2000e-5 4
Section 717, 42 U.S.C. (& Supp. IV) 2000e-16 13
Pregnancy Discrimination Act of 1978, Pub. L. No. 95-555, 92 Stat. 2076 2
Section 1, 92 Stat. 2076 11
Section 2(b), 92 Stat. 2076 3
Section 3, 92 Stat. 2076 35
N.Y. Ins. Law §§ 162-a, 164-a (McKinney Supp. 1982) 31
1976 N.Y. Laws ch. 843, §§ 1, 2 31
29 C.F.R. 800.116(d) 40
29 C.F.R. Part 1604 ..... 2, 37, 40
Section 1604.9(d) 10, 38
Section 1604 app. 11
p. 140 ..... 3, 11, 25, 37, 39
Section 1620.5 (1981) 41
41 C.F.R. Part 60:
Section 60-1.21 41
Section 60-20.3(c) 41

Miscellaneous:

Commission Decision No. 70-510, 1973 E.E.O.C. Dec. (CCH) ¶ 6132 (Feb. 4, 1970) 10

Miscellaneous—Continued: Page

Commission Decision No. 70-513, 1973 E.E.O.C. Dec. (CCH) ¶ 6114 (Feb. 4, 1970) 10
Commission Decision No. 70-660, 1973 E.E.O.C. Dec. (CCH) ¶ 6133 (Mar. 24, 1970) 10
Commission Decision No. 71-1100, 1973 E.E.O.C. Dec. (CCH) ¶ 6197 (Dec. 31, 1970) 10
123 Cong. Rec. (1977):
p. 7539 19
p. 7540 12
p. 7541 20
p. 10582 ..... 20, 22
p. 10583 35
p. 29387 20
p. 29641 20
p. 29642 27
p. 29643 28
p. 29644 28
p. 29654 19
p. 29663 27
124 Cong. Rec. (1978):
p. 21436 20
pp. 29650-29652 31
1 *Digest of Health and Insurance Plans* (1974) 33
Discrimination on the Basis of Pregnancy, 1977: Hearings on S. 995 Before the Subcomm. on Labor of the Senate Comm. on Human Resources, 95th Cong., 1st Sess. (1977) 29, 30, 31
44 Fed. Reg. (1979):
p. 23804 3
pp. 23804-23805 ..... 11, 25
46 Fed. Reg. (1981):
p. 38029 40
pp. 42968, 42971 41
p. 43848 41
p. 43851 41
Gillooly, *The Irrational Trend Towards Mandatory Maternity Coverage*, 26 Drake L. Rev. 758 (1976) 33

Miscellaneous—Continued: Page

H.R. Rep. No. 95-948, 95th Cong., 2d Sess., (1978) 18, 22, 34
Legislation to Prohibit Sex Discrimination on the Basis of Pregnancy: Hearings on H.R. 5055 and H.R. 6075 Before the Subcomm. on Employment Opportunities of the House Comm. on Education and Labor, 95th Cong., 1st Sess. (1977) 25, 30, 31
S. 995, 95th Cong., 2d Sess. (1978) 12, 20, 22, 26, 29
S. Rep. No. 95-331, 95th Cong., 1st Sess. (1977) ..... *passim*
S. Roberts, *Dictionary of Industrial Relations* (1966) 28
Senate Comm. on Labor and Human Resources, 96th Cong., 2d Sess., Legislative History of the Pregnancy Discrimination Act of 1978 (Comm. Print 1980) ..... *passim*

In the Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-411

NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY, PETITIONER

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

OPINIONS BELOW

The en banc decision of the court of appeals (Pet. App. 1a) is reported at 682 F.2d 113. The decision of the panel of the court of appeals (Pet. App. 2a-8a) is reported at 667 F.2d 448. The final opinion and order of the district court in Civil Action No. 80-20-NN (Pet. App. 9a-20a) is reported at 510 F. Supp. 66. The district court's final order in Civil Action No. 80-237-NN (Pet. App. 21a) is unreported.

JURISDICTION

The judgments of the court of appeals (Pet. App. 22a-23a) were entered on June 22, 1982. The petition for a writ of certiorari was filed on September 10,

1982, and was granted on December 6, 1982. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTE AND REGULATION INVOLVED

The relevant provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. (& Supp. IV) 2000e *et seq.*, and the EEOC's Guidelines on Discrimination Because of Sex, 29 C.F.R. 1604, are set forth at Pet. 2-6.

STATEMENT

1. Congress enacted the Pregnancy Discrimination Act of 1978 ("PDA"), Pub. L. No. 95-555, 92 Stat. 2076 (Pet. App. 50a), in response to this Court's decision in *General Electric Co.* v. *Gilbert*, 429 U.S. 125 (1976), which held that pregnancy-related classifications did not on their face constitute sex-based classifications under Title VII. The PDA amended the "Definitions" section of Title VII to add subsection (k), which provides that "[t]he terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions * * *." 42 U.S.C. (Supp. IV) 2000e(k).[1]

---

[1] The full text of the new subsection states:

> The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e-2(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother

Within seven months after the PDA's passage, the Equal Employment Opportunity Commission revised its Guidelines on Discrimination Because of Sex to reflect changes required by the Act. The final guidelines, and an Appendix of 37 Questions and Answers, were published on April 20, 1979.[2] 44 Fed. Reg. 23804 (1979), codified at 29 C.F.R. 1604 and Appendix. The Answers to Questions 21 and 22 (at 140) set forth the Commission's position that Title VII, as amended by the PDA, requires that "if an employer's insurance program covers the medical expenses of spouses of female employees, then it must equally cover the medical expenses of spouses of male employees, including those arising from pregnancy-related conditions" (see Pet. 5-6).[3]

2. In September 1979, John McNulty, an employee of petitioner, filed a charge of discrimination with the EEOC against petitioner, alleging that it had unlawfully refused to provide full insurance coverage for his wife's hospitalization due to pregnancy (J.A. 15). One month later, a similar charge was filed on behalf

---

would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: *Provided*, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

[2] Under Section 2(b) of the PDA (92 Stat. 2076), its provisions did not apply to fringe benefit plans until 180 days after enactment (*i.e.*, until April 29, 1979). Pet. App. 50a-51a.

[3] The guidelines also make clear that an employer is not obliged to provide the same level of health insurance coverage for pregnancy-related expenses of the spouses of male employees as it provides for its female employees. *Ibid.*

of petitioner's male production and maintenance employees by the United Steelworkers of America, their collective bargaining representative (J.A. 16-18).

The petitioner's hospitalization and medical-surgical health insurance plan extends coverage to employees, their spouses, and unmarried children (Pet. App. 29a-30a). The "Basic Plan" generally pays in full for a semi-private hospital room for up to 120 days and hospital services and "other necessary services while hospitalized up to 100% of the first $750, then 80% of the excess up to 120 days" (Pet. App. 31a-32a). A dependent's illness or injury is covered to the same extent as an employee's illness or injury, except that a dependent's pregnancy-related expenses are reimbursed only for "up to $500 of the hospital charges and 100% of reasonable and customary for delivery and anesthesiologist charges [sic]" (Pet. App. 37a).

Before the EEOC began to process the McNulty and Steelworkers charges, petitioner filed suit on January 31, 1980, against the Commission and the charging parties, seeking a declaratory judgment that the Commission's regulations interpreting the PDA were void, and requesting that the Court permanently enjoin EEOC from enforcing those interpretations (J.A. 5-14). After the Commission completed the processing of McNulty's charge, it filed suit on December 15, 1980, against petitioner under Section 706 of Title VII, 42 U.S.C. 2000e-5 (J.A. 28-30).

3. Before discovery commenced in the Commission's Title VII enforcement suit, the district court, on cross motions for summary judgment, ruled in favor of petitioner in its declaratory judgment action (Pet. App. 9a-20a). Based on that ruling, the court dismissed the EEOC's complaint in the Title VII action for failure to state a claim upon which relief

could be granted (Pet. App. 21a). Relying on *General Electric Co.* v. *Gilbert*, *supra*, the court held that petitioner's restriction on coverage for a spouse's pregnancy-related expenses "does not constitute gender-based discrimination" on its face and was not shown to have "caused any gender-based effect" in violation of Title VII (Pet. App. 16a-17a). The court recognized that the PDA was enacted in response to *Gilbert*'s holding that pregnancy classifications are not sex-based classifications, but concluded that the Act merely "carve[d] out a narrow exception" to *Gilbert*, which applied only to claims of pregnancy discrimination submitted by women employees or applicants for employment (Pet. App. 14a-16a).

A divided panel of the court of appeals, having consolidated the cases, reversed. The panel rejected the district court's view that the PDA's clarification of Title VII's definition of sex discrimination applied only to claims of female employees. Analyzing the PDA's language, the panel explained (Pet. App. 5a-6a; emphasis in original):

> The first clause of the subsection provides that the terms "because of sex" and "on the basis of sex" include because of, or on the basis of, pregnancy, childbirth and related medical conditions. By statutory definition those disabilities are within the meaning of the word "sex." There is nothing to suggest that the definition will vary depending upon the employment status of the pregnant woman. The second clause reads quite harmoniously with the first, since coverage of spouses is employment-related and the statutory reference to the receipt of fringe benefits contains no intimation that benefits payable with respect to the disability of a spouse are excluded from the statute's reach. The statutory reference

> to "ability or inability to work" denotes disability and does not suggest that the spouse must be an employee of the employer providing the coverage. In fact, the statute says "as other persons not so affected," it does not say "as other *employees* not so affected."

Turning to legislative history, the panel noted that two senators, Bayh and Cranston, specifically stated that Title VII, as amended by the PDA, would require complete coverage for employees' wives, including pregnancy-related coverage, where complete coverage is provided for husbands of women workers (Pet. App. 6a). Recognizing that the Senate Committee may have "thought the question an open one," the panel found that fact to provide "no platform for the company's contention that the question should be resolved upon a consideration of the reach of Title VII prior to enactment of the Pregnancy Discrimination Act" (Pet. App. 7a), *i.e.*, under the principles of *General Electric Co.* v. *Gilbert*, *supra*. Rather, the panel stated, "[u]pon enactment, the new subsection became an integral part of Title VII" and it established, for the purpose of subsequent litigation, that all "[d]istinctions based on pregnancy * * * are distinctions based on sex" (Pet. App. 7a). The panel concluded (*ibid.*):

> Since the company's health insurance plan contains a distinction based on pregnancy that results in less complete medical coverage for male employees with spouses than for female employees with spouses, it is impermissible under the statute.

On rehearing en banc, a majority of the court upheld the panel's ruling for the reasons set forth in the panel's opinion (Pet. App. 1a).

SUMMARY OF ARGUMENT

The Pregnancy Discrimination Act of 1978 added one paragraph to Title VII's "Definitions" section in order to clarify that the statute's terms "because of sex" or "on the basis of sex" include because of or on the basis of pregnancy. In the courts below, the litigation turned on whether that definition applies only to claims of pregnancy-based discrimination against women workers, or whether it applies across-the-board to the analysis of all Title VII claims involving pregnancy. If applied across-the-board, the PDA, operating in conjunction with substantive Title VII principles that prohibit discrimination against men as well as women in the fringe benefits of employment, clearly renders petitioner's restrictions on spousal pregnancy coverage unlawful.

Across-the-board application of the PDA is supported by the plain language of the Act, which clarifies the definition of sex discrimination throughout Title VII, and specifically requires that all "women affected by pregnancy" shall be treated the same "for all employment-related purposes" as other similarly disabled persons. The legislative history confirms that Congress intended in the PDA to overrule entirely, for Title VII purposes, this Court's ruling in *General Electric Co.* v. *Gilbert*, *supra*, that distinctions based on pregnancy are not on their face based on sex, and to ban any pregnancy-based distinctions between employees. While the Senate report on the bill that became the PDA noted that its effect on benefit plans for dependents that exclude pregnancy benefits was an open question to be decided under basic Title VII principles, that reservation implies congressional recognition that such plans would be improper if they discriminated on the basis of the employee's sex—as they do when benefits for spousal pregnancies are de-

nied. Two sponsors of the bill expressly so stated in the debate immediately preceding passage of the PDA, and the cost estimates upon which Congress acted assumed that employer health benefit plans for dependents would be affected. Moreover, to read the PDA as providing protection only for female employees who are disabled by pregnancies would be to single them out for special benefits, inconsistently with Title VII's basic purpose of providing equal treatment for all employees, regardless of sex. Finally, the contemporaneous interpretation of the EEOC, communicated to Congress before the enactment of the PDA, is the one we urge here—that restrictions on spousal pregnancy coverage are unlawful under Title VII as amended by the PDA. That interpretation, to which the Commission has consistently adhered, is entitled to substantial deference.

ARGUMENT

I. TITLE VII PROHIBITS EMPLOYERS FROM DISCRIMINATING AGAINST MALES IN PROVIDING SPOUSAL MEDICAL BENEFITS

It is well-settled that Title VII forbids discrimination in fringe benefits against male as well as female employees.[4] It is equally clear that insurance cover-

---

[4] See, *e.g.*, *EEOC* v. *Colby College*, 589 F.2d 1139 (1st Cir. 1978) (life insurance benefits); *Fitzpatrick* v. *Bitzer*, 519 F.2d 559 (2d Cir. 1975), rev'd for failure to award back pay, 427 U.S. 445 (1976) (retirement benefits); *Chastang* v. *Flynn & Emrich Co.*, 541 F.2d 1040 (4th Cir. 1976) (same); *Rosen* v. *Public Service Electric & Gas Co.*, 477 F.2d 90 (3d Cir. 1973) (same). Cf. *McDonald* v. *Santa Fe Trail Transportation Co.*, 427 U.S. 273, 280 (1976) (white employee may allege race discrimination); *Faraca* v. *Clements*, 506 F.2d 956 (5th Cir.), cert. denied, 422 U.S. 1006 (1975) (white male may claim race discrimination when employment was denied because wife was black).

age for employees' spouses is a fringe benefit of employment that is protected by Title VII. *Wambheim* v. *J. C. Penney Co.*, 642 F.2d 362 (9th Cir. 1981) (health insurance plan); *Los Angeles Dep't of Water and Power* v. *Manhart*, 435 U.S. 702, 709 n.14 (1978) (retirement, disability, and death insurance benefit plan including spousal benefits).[5] Thus, a health insurance plan provided by an employer for his workers and their families that limits the spousal coverage available to male employees, because of their sex, is unlawful under Title VII. Such a plan forces a male employee, unlike his female counterpart, to finance himself some of the expenses resulting from his spouse's disabilities. The man is thereby provided

---

[5] This Court has repeatedly held that federal statutes that provide less generous benefits to spouses of female wage earners than to spouses of male wage earners discriminate against the female wage earner on the basis of sex in violation of equal protection rights secured by the Due Process Clause of the Fifth Amendment. *Califano* v. *Goldfarb*, 430 U.S. 199, 207-208 (1977) (invalidating requirement applied solely to female wage earners that wage earner's widower prove he was receiving at least one-half support from his wife when she died to be eligible for survivor's benefits); *Weinberger* v. *Weisenfeld*, 420 U.S. 636, 646-647 (1974) (survivor's benefits formerly available solely to male wage earner's survivors required for widower with minor children); *Frontiero* v. *Richardson*, 411 U.S. 677, 688-691 (1973) (female member of uniformed services need not prove spouse is dependent to obtain increased quarters allowance and medical and dental benefits since male member not subjected to this requirement). Cf. *Wengler* v. *Druggists Mutual Ins. Co.*, 446 U.S. 142, 147 (1980) (state statute requiring widower, but not widow, to prove dependence for entitlement to death benefits violates Fourteenth Amendment). In these spousal benefits cases, as in Title VII, the relevant comparison is between the female and male wage earner, since it is to the wage earner that the benefits flow.

less compensation than his female coworker. This practice on its face violates Section 703(a)(1) of the Act, 42 U.S.C. 2000e-2(a)(1), which forbids an employer to discriminate against any individual with respect to his "compensation, terms, conditions or privileges of employment, because of such individual's * * * sex."[6]

A plan that extends full coverage for employees' husbands but that limits coverage for employees' wives has the same effect. A distinction based explicitly on the sex of a spouse necessarily discriminates among employees on the basis of sex, since the spouse's sex defines the employee's sex.

Petitioner's plan does not deny full coverage to employees' wives expressly because they are women. However, because it restricts coverage on the basis of a spouse's pregnancy, it is no more lawful than a plan that restricts coverage on the basis of a spouse's sex if, as we submit and the court of appeals held, the PDA establishes the general principle that pregnancy-based distinctions are sex-based distinctions.[7]

---

[6] The Commission has always taken the position that it is an unlawful employment practice for a company to provide a health insurance plan that differs in coverage of dependents based on the sex of an employee. See Guidelines On Discrimination Because of Sex, 29 C.F.R. 1604.9(d); Commission Decision No. 70-510, 1973 E.E.O.C. Dec. (CCH) ¶ 6132 (Feb. 4, 1970) (health insurance); Commission Decision No. 70-513, 1973 E.E.O.C. Dec. (CCH) ¶ 6114 (Feb. 4, 1970) (death benefits); Commission Decision No. 70-660, 1973 E.E.O.C. Dec. (CCH) ¶ 6133 (Mar. 24, 1970) (health insurance); Commission Decision No. 71-1100, 1973 E.E.O.C. Dec. (CCH) ¶ 6197 (Dec. 31, 1970) (group insurance).

[7] Petitioner incorrectly claims that the court held its plan unlawful based on the PDA alone (Pet. Br. 11 n.14), and rendered it "unlawful for an employer's medical insurance

II. THE PDA APPLIES TO ALL TITLE VII CLAIMS INVOLVING PREGNANCY

The language and structure of the PDA, as well as its legislative history and the purposes and policies of Title VII, fully support the construction of the Act adopted by the court of appeals. That construction is, moreover, in accord with the contemporaneous interpretation of the Act by the agency responsible for its enforcement.

A. The Plain Language Of The Statute Applies To All Title VII Claims Involving Pregnancy

Section 1 of the Pregnancy Discrimination Act of 1978, Pub. L. No. 95-555, 92 Stat. 2076, clarified the definition of sex discrimination by adding the follow-

---

plan to make *any* distinctions, based on pregnancy, childbirth, or related medical conditions, even distinctions which impact only on non-employees" (Pet. Br. 9; emphasis in original). After holding that the PDA establishes that pregnancy distinctions are sex-based for all Title VII purposes, the court struck down petitioner's plan because its pregnancy distinction discriminated between male and female employees in the receipt of spousal insurance coverage, a fringe benefit (Pet. App. 6a-7a). While the scope of the PDA's definition was the critical issue, the basis of liability was the discrimination that the pregnancy rule effectuated in violation of Title VII. A distinction based on a non-employee's pregnancy that does not result in discrimination between male and female employees—*e.g.*, a limitation or exclusion of medical coverage for the pregnancies of all employees' children—obviously does not violate Title VII. See 29 C.F.R. 1604 app., at 140 (Question and Answer 21); 44 Fed. Reg. 23804-23805 (1979) (Supplementary Information). Although the court of appeals did not address that issue, nothing in its opinion suggests that it would disagree.

ing Subsection to Section 701, the general "Definitions" section of Title VII: [8]

> (k) The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 703(h) of this title shall be interpreted to permit otherwise. * * *

The first clause of Section 701(k), by its terms, provides the standard to be applied whenever any issue arises under Title VII involving pregnancy: discrimination "because of pregnancy, childbirth, or related medical conditions" is discrimination " 'because of sex.' " As Senator Harrison Williams explained when introducing the Senate bill (S. 995, 95th Cong., 2d Sess. (1978)), which ultimately became the PDA, the legislation "explicitly provide[s] that the term 'sex discrimination' within the meaning of the act includes discrimination based on 'pregnancy, childbirth or related medical conditions.' " 123 Cong. Rec. 7540 (1977), *reprinted in* Senate Comm. on Labor and Human Resources, 96th Cong., 2d Sess., Legislative History of the Pregnancy Discrimination Act of 1978, at 3 (Comm. Print 1980) (hereinafter, "Leg. Hist."). This broad statement of principle plainly indicates that all discrimination among employees resulting from the different treatment of

---

[8] It is significant that Section 701 provides definitions "for purposes of this Title," not simply for some sections of the Act.

pregnancy-related conditions is sex discrimination prohibited by Title VII.[9]

The second clause of the PDA explains the effect of the first clause: it states that "women affected by pregnancy * * * shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work * * *." This clause makes clear that under Title VII "women affected by pregnancy" shall not be treated differently from other persons

---

[9] Petitioner attempts to avoid the clear import of the first clause of the new definition by suggesting (Pet. Br. 10-11) that it means only that the substantive portions of Title VII should be read to include the new terms, and thus that Section 703(a) prohibits only discrimination against any individual "because of such individual's" pregnancy, childbirth or related conditions. But, of course, that is not the statute Congress enacted. Instead of simply amending Section 703(a) as petitioner suggests, it amended the general definition section, so that the term "sex discrimination" includes discrimination based on pregnancy, regardless of the particular phraseology in which the ban on sex discrimination is phrased in the substantive sections.

Petitioner's reading of the PDA would lead to anomalous and absurd results. Section 717 of Title VII, 42 U.S.C. (& Supp. IV) 2000e-16, provides that "[a]ll personnel actions affecting employees or applicants for employment [in the federal government service] * * * shall be made free of any discrimination based on race, color, religion, sex, or national origin", while Section 703, 42 U.S.C. 2000e-2, provides that private employers may not discriminate against any individual because of such individual's "race, color, religion, sex or national origin". Thus, under petitioner's mechanistic approach to the statute, private employers may treat pregnancy in a way which disadvantages male employees, while the federal government may not. There is absolutely no indication that Congress intended any such distinction. Cf. *Chandler* v. *Roudebush*, 425 U.S. 840 (1976).

covered in benefit plans including, of course, health insurance benefit plans of the sort involved here.[10] It does not refer to pregnancies of *employees*, or otherwise suggest that pregnant spouses are not "women affected by pregnancy." As the court of appeals observed (Pet. App. 5a-6a), the requirement in the second clause that such women be treated like other persons not so affected but "similar in their ability or inability to work" means that pregnancy, to the extent it creates a disability, is to be treated as are all other disabilities that "persons" may suffer.[11] It thus effectuates Congress's intent to overrule the underlying rationale of *Gilbert* "that employers may treat pregnancy and its incidents as *sui generis* without regard to its functional comparability to other conditions." S. Rep. No. 95-331, 95th Cong., 1st Sess. 4 (1977). Neither literally nor conceptually does this phrase require that the woman whose pregnancy occasions the claim for medical expenses under a health insurance plan herself work for the employer under whose plan the claim is made, or for any employer.[12]

---

[10] Significantly, the next sentence of the paragraph refers expressly to health insurance benefits, so congressional attention was evidently focused on the impact of the amendment on such plans.

[11] It also means that to the extent pregnancy does not disable, pregnant women are to be treated like other able persons.

[12] The argument that comparison to "ability or inability to work" in the second clause limits the PDA's scope to claims of female workers resembles the argument rejected by this Court in *McDonald* v. *Santa Fe Trail Transportation Co.*, *supra*. The Court there held that 42 U.S.C. 1981 protects whites against racial discrimination because the statute's comparison to rights "enjoyed by white citizens" simply "emphasiz[ed] the 'racial character of the rights being protected' "

Even if, as petitioner argues (Pet. Br. 19-20), the second clause were read as applying only to women employees, it would hardly follow that the clause restricts the Act's definition to claims of women workers. The Committee Reports and sponsor's statements upon which petitioner relies (Pet. Br. 16, 19-20) unequivocally state that the Act first broadens Title VII's definition of sex discrimination to subsume pregnancy discrimination, and then "also makes clear" or "specifically * * * define[s]" what treatment of pregnant women workers is mandated by that definitional amendment. Thus, the second clause at best applies the PDA's definition in a particular set of circumstances; it cannot be read to limit its application to those circumstances.[13]

To read the second clause as limiting the Act's scope, moreover, contravenes the well-established rule that statutes must be interpreted to give effect, where possible, to every word Congress used. See, *e.g.*, *Reiter* v. *Sonotone Corp.*, 442 U.S. 330, 339 (1979). If, as petitioner contends, the PDA was enacted only

---

and did not restrict the statute's protection to non-whites. 427 U.S. at 827. Here, the comparison emphasizes the functional basis of the conditions to be covered. See S. Rep. No. 95-331, *supra*, at 4.

[13] We note that the second clause of the PDA is joined to the first by the conjunction "and," a word which "is always employed to express the relation of addition." *Montello Salt Co.* v. *Utah*, 221 U.S. 452, 466 (1911). Thus, the second clause, grammatically, forms a conjunctive proposition and not a conditional proposition that limits or subtracts from the first. Although no court should "review congressional enactments as a panel of grammarians * * * neither [should it] regard ordinary principles of English prose as irrelevant to a construction of those enactments." *Flora* v. *United States*, 362 U.S. 145, 150 (1960).

to protect women employees from pregnancy-based discrimination, the first clause is inoperative because the second alone completely effectuates that intent. Under petitioner's interpretation the second clause comprehensively prohibits discrimination against pregnant women workers, by requiring that they be treated in all phases of employment the same as other persons similarly-situated with respect to their ability or inability to work. Thus, the first clause is mere surplusage. In order to give effect to the PDA's language in its entirety, petitioner's construction of the statute must be rejected.[14]

B. The Legislative History Confirms The Plain Meaning of the PDA

1. A primary impetus behind the enactment of the PDA was to protect women employees from the consequences of the decision in *General Electric Co.* v. *Gilbert*, *supra*, as the congressional statements cited by petitioner attest (Pet. Br. 14-19). However, the fact that Congress expressed a special concern for "working women" cannot, standing alone, support an interpretation of the new definition added by the PDA that conflicts with the established principle that both women and men are protected by Title VII. Such expressions are similar to the numerous state-

---

[14] Petitioner asserts that each clause of the Act was designed to overrule, for the benefit of women workers, each of two purported "holdings" of *Gilbert*, *i.e.*, that pregnancy discrimination against female employees is not gender-based, and that Title VII does not require employers to pay the extra cost of covering pregnancy under fringe benefit programs (Pet. Br. 29-30). Even if petitioner has accurately summarized *Gilbert* (and we think it has not), those two holdings are effectively overruled by the second clause alone.

ments in previous Title VII legislative history that voice concern over the protection of "blacks," "minorities," and "women"; those statements are not to be read as establishing that whites and men are not protected by Title VII. *McDonald* v. *Santa Fe Trail Transportation Co.*, 427 U.S. 273 (1976).[15]

Moreover, to interpret the PDA as amending Title VII's definition of sex discrimination only for the benefit of women workers would overlook the fact that Congress rejected not only the narrow holding, but also the rationale, of *Gilbert*, and intended in the new Act simply to assure that Title VII would bar discrimination on the basis of pregnancy, just like any other sex-based discrimination. Although Congress clearly intended to require non-discriminatory treatment of women employees, it certainly did not intend to require discrimination in their favor, as petitioner's reading of the PDA suggests.

The legislative history of the PDA makes clear that Congress's purpose in enacting the statute was to overrule entirely, for purposes of Title VII, the rationale of this Court in *General Electric Co.* v. *Gilbert*, *supra*, 429 U.S. at 136, that "pregnancy * * * is not gender-based * * * at all", and to adopt instead the analysis of the dissenters in that case. As the

---

[15] Nor does the absence of extensive congressional debate on the subject of dependent coverage support an interpretation that restricts the language of the PDA which, by its terms, reaches discrimination on the basis of dependent spouses' pregnancies. Congress often fails to debate all aspects of legislation fully, as this Court has noted with respect to Title VII. See *General Electric Co.* v. *Gilbert*, *supra*, 429 U.S. at 136 (Title VII's legislative history on sex discrimination is "notable primarily for its brevity."); *County of Washington* v. *Gunther*, 452 U.S. 161 (1981).

Senate Report states (S. Rep. No. 95-331, *supra*, at 2-3; Leg. Hist. 39-40): [16]

> In the committee's view, the following passage from the two dissenting opinions in [*General Electric Co.* v. *Gilbert*] correctly express both the principle and the meaning of Title VII. As Mr. Justice Brennan stated: "Surely it offends commonsense to suggest . . . that a classification revolving around pregnancy is not, at the minimum, strongly 'sex related'." Likewise, Mr. Justice Stevens stated that, "(b)y definition, such a rule discriminates on account of sex; for it is the capacity to become pregnant which primarily differentiates the female from the male."
>
> Thus, S. 995 was introduced to change the definition of sex discrimination in Title VII to reflect the "commonsense" view and to insure that working women are protected against all

---

[16] Similarly, the House Report (H.R. Rep. No. 95-948, 95th Cong., 2d Sess. 23 (1978); Leg. Hist. 148-149) states:

> Justice Brennan, in a dissenting opinion * * * pointed out that since the [*General Electric*] plan included comprehensive coverage for males, and failed to provide comprehensive coverage for females, the majority erred in finding that the exclusion of pregnancy disability coverage was a non-discriminatory policy. Furthermore, Justice Stevens, in his dissenting opinion, argued that "it is the capacity to become pregnant which primarily differentiates the female from the male."
>
> It is the committee's view that the dissenting Justices correctly interpreted the Act.
>
> * * * * *
>
> H.R. 6075 was introduced to change the definition of sex discrimination in Title VII to reflect the commonsense view and to ensure that working women are protected against all forms of employment discrimination based on [illegible]

> forms of employment discrimination based on sex.
>
> * * * * *
>
> This bill is intended to make plain that, under title VII of the Civil Rights Act of 1964, discrimination based on pregnancy, childbirth and related medical conditions is discrimination based on sex.

It is manifest throughout the history of the amendment that Congress disagreed with, and intended to overturn, the entire rationale of *Gilbert*.[17] For example, in introducing the Senate bill, Senator Williams emphatically took issue with the *Gilbert* decision, explaining that "when an employer's plan provides protection in the event of virtually every conceivable disability but one, and that one can affect only women, it is an inescapable conclusion that such a plan by definition discriminates on the basis of sex". 123 Cong. Rec. 7539 (1977); Leg. Hist. 1-2. Congressman Hawkins, introducing H.R. 5055, agreed:

> This view [in *Gilbert*]—that a classification which harms only women and does so on the basis of a factor inextricably linked to gender is

---

[17] Thus, the Senate Report states:

> [T]he bill rejects the view that employers may treat pregnancy and its incidents as sui generis, without regard to its functional comparability to other conditions.

S. Rep. No. 95-331, *supra*, at 4; Leg. Hist. 41. Similarly, Senator Javits—the ranking Republican member of the committee which considered S. 995, the bill which became the PDA—explained that pregnancy should not be treated as unique, stating:

> We do not want pregnancy discriminated against, as contrasted with a broken leg or a strep throat or appendicitis or some other basis for disability.

123 Cong. Rec. 29654 (1977); Leg. Hist. 106.

> not discrimination against women just because not all women are affected—is contrary to any sensible approach to what constitutes discrimination. For, as Justice Stephens [sic] noted in his dissent in *Gilbert*.
>
> It is the capacity to become pregnant which primarily distinguishes the female from the male, so that a rule which treats pregnancy as unique by definition * * * discriminates on account of sex.
>
> * * * * * *
>
> Therefore, H.R. 5055 is designed to make clear that * * * this Congress does regard discrimination based on pregnancy as discrimination based on sex and, in particular, that employers * * * must treat pregnant women as they treat other employees similar in their ability or inability to work.

123 Cong. Rec. 10582 (1977); Leg. Hist. 24.[18]

Despite this clear evidence that the PDA reflects congressional rejection of the rationale of *Gilbert*,

---

[18] See also, *e.g.*, the remarks of Senator Mathias, 123 Cong. Rec. 7541 (1977); Leg. Hist. 8 ("the Supreme Court has seen things differently. * * * Now the ball is back in the Congress' court. And, we have an opportunity * * * to amend Title VII to make clear that sex discrimination includes classifications based on pregnancy. The legislation which we now introduce, will achieve that goal."); remarks of Senator Javits, 123 Cong. Rec. 29387 (1977); Leg. Hist. 67 ("This principle, that discrimination against pregnant women is sex discrimination, is the substance of S. 995. As Mr. Justice Stevens stated: '(b)y definition, such a rule discriminates on account of sex'"); remarks of Senator Bayh, 123 Cong. Rec. 29641 (1977); Leg. Hist. 73 (bill made necessary by *Gilbert*, in which "broad exclusion of pregnancy discrimination under Title VII holds many unfortunate implications for other related issues"); remarks of Mr. Sarasin, 124 Cong. Rec. 21436 (1978); Leg. Hist. 168 (endorses Justice Stevens's dissent).

petitioner asks this Court to apply the *Gilbert* analysis here and even argues that *Gilbert* "establishes the only pertinent 'Title VII principles' " for application to this case (Pet. Br. 37).[19] More accurately, the *Gilbert* dissents, which were adopted in the PDA, establish those principles. Petitioner's construction of the PDA as applying only to women employees is wholly at odds with the Act's broad rejection of *Gilbert*. Petitioner asks this Court to hold that Congress in the PDA provided that an employee's pregnancy is sex-based, while a spouse's pregnancy is gender-neutral—a result hardly consistent with the "commonsense view" expressly endorsed by Congress.[20]

Moreover, it is entirely clear that Congress did not intend, in enacting the PDA, to require any special preferential treatment for female employees. Instead, the PDA was designed to adopt the *Gilbert* dissenters' view of the scope of Title VII, and simply to require implementation of that Title's anti-

---

[19] Indeed, petitioner's arguments that rely on *Gilbert* (and *Nashville Gas Co.* v. *Satty*, 434 U.S. 136 (1977), which follows *Gilbert*) to show that its plan has no prohibited discriminatory effect (Pet. Br. 41-49) are beside the point because the PDA establishes that the denial of spousal benefits here violates Title VII on its face. The Court in *Gilbert* considered the effects of the pregnancy exclusion there only after it had concluded that a distinction based on pregnancy did not on its face violate Title VII. When Congress rejected that conclusion, it rendered unnecessary the consideration of the effects of pregnancy distinctions.

[20] Petitioner's argument also adopts precisely the "*sui generis*" treatment of pregnancy that Congress rejected (see p. 19 n.17, *supra*); it would allow employers to single out pregnancy as the one spousal condition for which health benefits are limited.

discrimination principles within that newly clarified scope. See, *e.g.*, S. Rep. No. 95-331, *supra*, at 4, Leg. Hist. 41 ("Basic to all * * * applications is that the bill, because it would operate as part of Title VII, prohibits only discriminatory treatment"); H.R. Rep. No. 95-948, *supra*, at 4; Leg. Hist. 150 ("It must be emphasized that this legislation, operating as part of Title VII, prohibits only discriminatory treatment"); 123 Cong. Rec. 10582 (1977); Leg. Hist. 25 (remarks of Rep. Hawkins) ("It is also important to understand what this bill would not do. Like Title VII generally, it merely requires that employers not discriminate"). Petitioner's claim that the PDA is a special protective statute for women employees (Pet. Br. 30-31) ignores this clear evidence of Congress's contrary intent.

2. Nor does our contention rest solely on general expressions of the congressional intent to reject *Gilbert* and require that pregnancy-related disabilities be treated like any other non-work related disability. The Senate Report on S. 995, the bill that became the PDA, strongly implied that spousal pregnancy costs were to be treated like other disabilities, and both sponsors and opponents of that bill—and the EEOC itself—specifically informed Congress that Title VII as amended by the PDA would require that result. Moreover, the estimates considered by Congress of the PDA's financial impact on medical insurance plans included costs for spousal pregnancy coverage.

The Senate Report notes that although the "basic" (not the only) purpose of the PDA is "to protect women employees", it was not designed to "alter the basic principles of title VII law as regards sex discrimination. Rather, this legislation clarifies the definition of sex discrimination for title VII purposes. Therefore, the question in regard to depend-

ents' benefits would be determined on the basis of existing title VII principles" S. Rep. No. 95-331, *supra*, at 5-6; Leg. Hist. 42-43. The Report explained those "existing principles" to some extent: it noted that they would not require that pregnancies of dependents be treated like employee pregnancies. But it recognized that "the question of whether an employer who does cover dependents * * * may exclude conditions related to pregnancy from that coverage is a different matter." Because the committee was not aware of any litigated cases involving such plans, it noted only that although "[i]t is certainly not this committee's desire to encourage the institution of such plans", there was an open question "[if] such plans should be instituted in the future" as to "whether, under title VII, the affected employees were discriminated against on the basis of their sex as regards the extent of the coverage for their dependents" (*ibid.*).

The clear congressional rejection of this Court's decision in *Gilbert* as an accurate assessment of Title VII principles (see pages 17-20, *supra*) refutes petitioner's suggestion (Pet. Br. 37) that the reference in the Senate Report to "existing Title VII principles" was an invitation to the courts to reaffirm the *Gilbert* analysis of pregnancy as unrelated to sex discrimination, if only in the context of spousal pregnancy.[21]

---

[21] If petitioner were correct, the validity of plans of the sort the Report states the committee "certainly [did] not * * * desire to encourage" (S. Rep. No. 95-331, *supra*, at 6; Leg. Hist. 43) would be virtually beyond dispute. *Gilbert* held that the exclusion of pregnancy from a benefits program is not sexually discriminatory absent a showing of disparate impact in the actuarial value of the benefit packages available to men and women. Since such a showing could not be made (see Pet. Br. 44-48) any challenge to the exclusion of spousal pregnancy

Instead, the courts were to accept the newly clarified "definition of sex discrimination for Title VII purposes" and apply it, consistently with accepted Title VII principles, to any case that arose "in the future"—*i.e.*, after Title VII had been amended by the PDA.

Clearly, the "existing Title VII principles" to which the Report refers are the substantive precepts relevant to this issue, viz., that men as well as women are protected under the statute from treatment in the work place which is less favorable than that accorded the opposite sex; that dependent health coverage is a benefit which flows to the wage earner; and that a health insurance plan which limits the extent of dependent coverage because of the sex of the employee is unlawful.

The Report recognized that those principles do not require that dependents be treated like employees.[22] As to the "different matter" of whether an employer plan that covers dependents may exclude the pregnancies of dependents, the answer to the open ques-

---

coverage from an employer's insurance plan, as a practical matter, would be doomed to failure under *Gilbert*.

[22] Under Title VII "the basic standard is comparability among employees" (S. Rep. No. 95-331, *supra*, at 5; Leg. Hist. 42). Petitioner incorrectly claims that because the Report states that the PDA would not require employers to provide maternity benefits for the spouses of their male employees to the same extent that they provide for their female employees, *Gilbert* controls the spousal benefits issue (Pet. Br. 8, 30-31 & n.37). The Report simply rejected the suggestion that spousal pregnancy coverage would be required "whether or not the employer provided any other coverage for dependents". If Congress had intended the PDA to have no application to the issue of spousal pregnancy benefits, the fact that the employer may otherwise provide dependent coverage would have been irrelevant.

tion reserved by the Report depends on whether the restriction discriminates between male and female employees. Although limitations on spousal pregnancies do so discriminate (see pages 9-10, *supra*), a limitation—applicable to male and female employees alike—on recovery for pregnancies of dependent children would not, and thus would not violate Title VII. See 29 C.F.R. 1604 app., at 140 (Question and Answer 21); 44 Fed. Reg. 23804-23805 (1979) (Supplementary Information).

b. The legislative history explains why the Senate Report expresses doubt about the validity of limitations on pregnancy benefits for dependents. On June 6, 1977, Senator Jacob Javits—the ranking Republican member of the Senate Committee on Human Resources, to which the pregnancy discrimination bill, S. 995, was referred—wrote to the head of EEOC on behalf of the Committee. Senator Javits requested the views of the Administration on the issue of "possible health insurance implications of the bill for maternity and other sex-linked coverages" (J.A. 42-44).

In a letter dated June 28, 1977,[23] and signed by Chairman Eleanor Holmes Norton of the EEOC,

---

[23] The original reply to Senator Javits' inquiry (J.A. 45-47) could be read as indicating that the proposed bill would require employers to cover the costs of spousal pregnancies whether or not they offered other dependent medical coverage. In contrast, Assistant Attorney General Drew Days had stated in House Hearings on the bill that it would not "reach dependents" (*Legislation to Prohibit Sex Discrimination On the Basis of Pregnancy: Hearings on H.R. 5055 and H.R. 6075 Before The Subcomm. on Employment Opportunities of the House Comm. on Education and Labor*, 95th Cong., 1st Sess. 187 (1977) (hereinafter "*House Hearings*")). The June 28, 1977 letter to Senator Javits obviously represented the final government position on the effect of the bill.

Solicitor Carin Clauss of the Department of Labor, and James P. Turner, Acting Assistant Attorney General for Civil Rights of the Department of Justice (J.A. 48-49), the government explained that:

> the additional medical insurance required by the bill for female employees would be required for the wives of male employees * * * only * * * where the employer maintains an otherwise comprehensive health insurance plan covering both employees and their dependents. It would not apply where the employer offers health insurance to employees only. In those circumstances, it would not be necessary to cover the medical costs of a dependent wife's pregnancy.

The Senate Committee issued its Report on S. 995 more than a week after the date of this letter. Surely, if Congress had disagreed with the views expressed therein, it would have stated that the administrative interpretation exceeded the Act's reach. It did not do so.[24]

c. Moreover, in debate on the Senate floor, two sponsors of the bill clarified the reference in the Senate Report to "Title VII principles" and their application to the denial of spousal pregnancy benefits.[25] Both Senator Bayh and Senator Cranston expressed the view that under the bill spousal pregnancies could

---

[24] Indeed, the Senate Report citation of "existing Title VII principles" (S. Rep. No. 95-331, *supra*, at 5), may well refer to the analysis contained in the government responses to Senator Javits's inquiry, since those responses referred to "general Title VII principles" to explain the result they reached.

[25] Statements of the sponsors of legislation are entitled to significant weight. *North Haven Board of Education* v. *Bell*, No. 80-986 (May 17, 1982), slip op. 14.

not be excluded from general medical services available to dependents.[26]

These were the only legislators to address the PDA's application to insurance coverage for pregnant spouses; no one expressed any disagreement with their elaboration on the statement in the Senate Report, or

---

[26] Senator Bayh stated (123 Cong. Rec. 29642 (1977); Leg. Hist. 75):

> There remains the question, however, of whether dependents of male employees must receive full maternity coverage if the spouses of female employees are provided complete medical coverage. While it is difficult to second-guess the courts, I feel that the history of sex discrimination cases under the 14th amendment [see p. 9 n.5, *supra*] in addition to previous interpretations of Title VII regulations relating to the treatment of dependents [see p. 10 n.6, *supra*] will require that if companies choose to provide full coverage to the dependents of their female employees, then they must provide such complete coverage to the dependents of their male employees.

Senator Cranston, stated in the same debate (123 Cong. Rec. 29663 (1977); Leg. Hist. 131):

> When the Human Resources Committee considered how S. 995 would affect medical coverage for dependents of employees, the question was raised about the obligation of an employer to pay for the pregnancy-related medical expenses of spouses of employees. The committee presumed that most comprehensive medical plans do cover dependents, and that it was unlikely that any comprehensive plan covering spouses would cover husbands of women employees but not wives of male employees. Thus, the committee did not directly answer the question of whether such plans would be discriminatory under title VII.
>
> Mr. President, I would like to express for the record my own view that such a plan would indeed be discriminatory, and would be prohibited by the title VII sex discrimination ban.

suggested that their remarks were in any way inconsistent with the analysis contained therein.[27] Instead,

---

[27] Indeed, Senator Williams—who, petitioner claims, [redacted] made clear that only pregnant workers would be protected by the bill (Pet. Br. 28)—rose immediately after Senator Bayh's remarks without taking issue with his views. 123 Cong. Rec. 29643 (1977); Leg. Hist. 77.

None of Senator Williams's statements quoted by petitioner limit the PDA to claims of women employees. While he stated that the Act would protect, and was necessary to protect, women workers, he nowhere stated that this was its sole purpose (see Pet. Br. 14-15). Petitioner misreads his colloquy with Senator Hatch (Pet. Br. 24-26) and with Allen Lazarescu of the American Council of Life Insurance (ACLI) (Pet. Br. 26) to argue otherwise. Senator Hatch inquired whether the phrase "women affected by pregnancy" included women employees who were not themselves pregnant or dependents of employees. 123 Cong. Rec. 29644 (1977); Leg. Hist. 80. Senator Williams answered, *solely in the context of income maintenance plans*, that the Act applied only to women employees themselves pregnant (*ibid.*). Such plans protect an employee from loss of wages while he is absent from work due to a disability (S. Roberts, *Dictionary of Industrial Relations* 78 (1966)) and thus necessarily apply only to employees. On the other hand, medical benefit or health insurance plans do not replace lost wages but instead reimburse an employee for medical costs related to a disability. *Id.* at 136. Such plans may be provided for employees only, or, as here, for an employee, a spouse, and other dependents. The legislative history of the PDA shows that Congress was well aware of the distinction between disability and medical insurance. See, *e.g.*, the distinctions in both the Senate and House Reports between disability insurance and medical insurance (S. Rep. No. 95-331, *supra*, at 4-5; Leg. Hist. 41-42; H.R. Rep. No. 95-948, *supra*, at 5-6, Leg. Hist. 151-152). Petitioner argued below that to read Senator Williams's response as limited to income maintenance plans rendered it redundant or meaningless because to state that only women employees can receive income maintenance for work absence occasioned by their pregnancies is to state the obvious. This argument ignores the hypo-

having heard these statements, the Senate later on the same day voted overwhelmingly to pass S. 995.[28]

---

thetical posed by Senator Hatch which included whether women employees "affected by" the pregnancies of their daughters or co-workers with whom they car pool fall within the protection of the Act. Senator Williams's answer, that these women would not be entitled to income maintenance unless they themselves were pregnant, is responsive to Senator Hatch's inquiry.

Similarly, Senator Williams's statement that the Act "only deals with women employees," made during his exchange with ACLI representative Allen Lazarescu, occurred after an extended discussion between the two regarding the accuracy of the ACLI's estimate of the PDA's effect on disability benefits (*i.e.*, income maintenance) costs. *Discrimination on the Basis of Pregnancy, 1977: Hearings on S. 995 Before the Subcomm. on Labor of the Senate Comm. on Human Resources*, 95th Cong., 1st Sess. 397-402 (1977) (hereinafter *"Senate Hearings"*). As the discussion shows, Senator Williams was concerned about whether ACLI's use of women in the work force to estimate those costs was limited to workers in "the age groups where conservatively you might expect pregnancy" (*id.* at 402). Senator Williams's remarks were intended merely to determine whether estimates were based on the proper number of women in the work force so as to insure that estimates of disability coverage were not inflated, rather than to limit coverage of medical insurance benefits.

[28] Petitioner's suggestion (Pet. Br. 26) that these views were "idiosyncratic (and erroneous) view[s] of Title VII law prior to passage of the PDA" is accordingly unavailing. The Senators were, in effect, answering the questions raised in the Senate Report. Having heard their answers, the Senate passed the bill. It accordingly makes little difference whether the views when expressed were "idiosyncratic" or even correct—the crucial point is that the subsequent congressional action ratified them. See *Brown* v. *GSA*, 425 U.S. 820, 828 (1976). In any event, the explanations given of the effect of the PDA on established Title VII principles, and the conclusions as to the validity of exclusion of benefits for spousal pregnancy, were correct (see pp. 11-16, *supra*).

d. The opponents of the legislation agreed that employers who provided insurance coverage for spouses would be required to cover pregnancy as well. This view was expressed during the hearings by Richard Minck, Vice President and Actuary of the American Council of Life Insurance (ACLI), who stated (*House Hearings, supra*, at 120-121):

> The bill is drafted not in terms that you treat your male employees the same as your female employees, but in terms of saying that you make the same treatment for pregnancy that you do for any other disability.
>
> So that would mean whether the pregnancy involves the wife of a male employee, or a female employee, you would have to provide the same medical benefits on the same terms that you do for pneumonia.
>
> * * * * *
>
> You could not have a $500 flat benefit.

No Congressman at the hearing disagreed. This uncontradicted interpretation of the bill's scope is thus useful evidence of congressional intent. *Arizona* v. *California*, 373 U.S. 546, 582-583 and n.85 (1963).

e. The Congress considered several estimates of the effects to be anticipated from the PDA on the costs to employers of medical insurance plans. All of these estimates assumed that enactment of the PDA would affect the cost of pregnancy coverage for dependents of employees.

In response to requests from Congressman Hawkins and Senator Williams (see *House Hearings, supra*, at 180; *Senate Hearings, supra*, at 556), the Department of Labor prepared a report on the PDA's ramifications for employers' insurance costs. The Department's report stated (footnote omitted):

> The costs of private sector health insurance will also be affected by H.R. 6075. However, precise data on the cost impact of the bill with respect to health insurance plans could not be estimated reliably. Published data from the Social Security Administration with information on dependents' health care coverage are only available through 1970. Thus, this coverage would have to be extrapolated to 1976 with * * * significant further adjustments to assess costs for dependents * * *.

Senate Hearings, *supra*, at 563-564; *House Hearings*, *supra*, at 182.

The American Council of Life Insurance, in opposition to the bill, also submitted a report estimating that the PDA would increase health insurance costs by $1.1 billion. That figure was based on the number of women in the child-bearing population, not simply on the number of women employees of child-bearing age (the figure that report used to estimate increased *disability* insurance costs). The ACLI report extrapolated its national estimate from the cost experience in New York State, where the state insurance law was amended in 1976 to require that all group and individual health insurance policies provide coverage for maternity care of the insured and the insured's dependents to the same extent as coverage for other illnesses or diseases.[29] See *Senate Hearings*, *supra*, at 399, 402, 424, 425-426, 431; *House Hearings*, *supra*, at 94, 96, 98-99, 104.[30]

---

[29] See N.Y. Ins. Law §§ 162-a, 164a (McKinney Supp. 1982); 1976 N.Y. Laws, ch. 843 §§ 1, 2.

[30] The ACLI estimates were presented and discussed during debate on the bill by the entire Senate (124 Cong. Rec. 29650-29652 (1978); Leg. Hist. 98-102). Petitioner is therefore incorrect in asserting that "even opponents of the Act * * * did not include the enormous costs of dependents' coverage in their

Congress's discussion of these two reports is illuminating. Although the Senate Committee Report discredited the ACLI's $1.1 billion figure as "demonstrably too high" (S. Rep. No. 95-331, *supra*, at 9, Leg. Hist. 46), it did not suggest that estimates based on the New York law inappropriately included the costs of dependent maternity coverage. Instead, the Senate Report faulted the estimate only because it was "apparently based upon the assumption that this legislation would require medical and hospital insurance coverage for maternity under all plans administered by insurance companies" (*ibid.*). The Report countered that, in fact, "[t]his legislation does not require that hospital medical insurance benefits be provided for maternity, it merely requires that where hospital medical benefits are provided they must be provided on a nondiscriminatory basis" (*ibid.*).[31] The Report

---

estimates" (Pet. Br. 23 n.33). Moreover, of the three witness statements cited by petitioner in support of this proposition, two addressed only the increased costs for providing *disability benefits* for pregnancy which, of course, are simply not available to dependents (see p. 28 n.27, *supra*). Similarly, in asserting that "[t]he cost of covering pregnant employees, not the cost of covering pregnant wives of male employees, was the focus of all debate and discussion on the economic effects of the Act", petitioner cites ten statements of witnesses at the congressional hearings, all of whom addressed only the cost of providing *disability benefits* for pregnancy (Pet. Br. 23 n.32). This cost "debate and discussion" could not have delimited the scope of the PDA, or even women employees would not be entitled to medical coverage for their pregnancies under Title VII as amended.

[31] The Report observed that "[a]ccurate calculation of the cost of correcting discriminatory plans would require detailed information about the number of women covered by employment-related medical plans which are discriminatory" and the degree to which those plans discriminate. S. Rep. No. 95-331, *supra*, at 9-10; Leg. Hist. 46-47. In a footnote, the Report

then also noted that the cost of the PDA "would not include the provision of hospital medical benefits for maternity in States, like New York, where insurance for maternity is mandatory under State law," nor would it include "adjustments to provide nondiscriminatory coverage of medical conditions related to pregnancy [in 25 states] where nondiscrimination is already mandated by State law." *Id.* at 10; Leg. Hist. 47; see also H.R. Rep. No. 95-948, *supra*, at 10; Leg. Hist. 156.[32]

---

referred to the Department of Labor's 1 *Digest of Health and Insurance Plans* (1974) as indicating that of 148 representative health plans summarized, 59% appeared to provide nondiscriminatory maternity coverage while 41% appeared to be discriminatory. *Id.* at 10 n.1; Leg. Hist. 47 n.1. All of the health benefits described in those plans—including maternity benefits—were applicable to employees and their dependent spouses and children. *Digest of Health and Insurance Plans, supra*, at IX (and summaries of individual plans).

[32] Petitioner wrongly asserts that the "mandatory maternity coverage" in New York to which the Senate Report referred was a product of the state court decision in *Brooklyn Union Gas Co.* v. *New York State Human Rights Appeal Board*, 41 N.Y. 2d 84, 359 N.E. 2d 393, 390 N.Y.S. 2d 884 (1976) and the state's Workers' Compensation Law, neither of which "required employers providing spousal medical benefits to insure against spousal pregnancies" (Pet. Br. 22). As we have shown, the New York insurance law cited in the Report (S. Rep. No. 95-331, *supra*, at 9; Leg. Hist. 46) and by the ACLI (see S. Rep. No. 95-331, *supra*, at 27) does require coverage for spousal pregnancy on the same terms as coverage for any other illness or injury. Other states had similar laws. See Gillooly, *The Irrational Trend Towards Mandatory Maternity Coverage*, 26 Drake L. Rev. 758, 764-765 (1976) (collecting statutes).

Although the Senate Report cited *Brooklyn Gas* when it referred to New York as one of the 25 states in which the PDA would impose no substantial additional medical insurance costs, petitioner's argument (Pet. Br. 22) that this refer-

The Senate Report then specifically addressed the Department of Labor's report, and agreed with its conclusion that no accurate estimate of the bill's impact on medical insurance costs was possible. Significantly, neither the Senate nor the House took issue with Labor's position that any such estimate would have to include "adjustments to assess costs for dependents" (p. 31, *supra*). S. Rep. No. 95-331, *supra*, at 10; Leg. Hist. 47; H.R. Rep. No. 95-948, *supra*, at 10; Leg. Hist. 156.[33]

---

ence shows Congress did not intend the PDA to affect dependent pregnancy coverage, because *Brooklyn Gas* dealt only with women employees, is spurious. The issue in *Brooklyn Gas* was whether the denial of disability benefits and sick leave to pregnant women workers violated the state's prohibition against sex discrimination. In finding such a violation, the court merely reaffirmed its previous rulings that pregnancy discrimination is sex discrimination. See, *e.g.*, *Union Free School District No. 6* v. *New York State Human Rights Appeal Board*, 35 N.Y. 2d 371, 320 N.E. 2d 859 (1974). The rationale of *Brooklyn Gas* thus mandates non-discriminatory medical coverage of pregnancy, regardless of whether the pregnancy is that of a woman employee or a male employee's spouse. The same is true of the Wisconsin and Pennsylvania state court decisions cited by petitioner (Pet. Br. 22 n.31): *Anderson* v. *Upper Bucks County Area Vocational Technical School*, 30 Pa. Commw. 103, 373 A.2d 126 (1977) (denial of sick leave to pregnant employees is unlawful under state law banning sex discrimination because "pregnancy-based discrimination constitutes sex discrimination"); *Ray-O-Vac* v. *Dep't of Industry, Labor & Human Relations*, 70 Wis. 2d 919, 236 N.W. 2d 209 (1975) ("Pregnancy is undeniably a sex-related characteristic", so limitation on disability benefits for pregnant employees is unlawful under state law banning sex discrimination).

[33] Petitioner's characterization of the additional medical insurance costs for covering spousal pregnancy as "staggering" (Pet. Br. 23), thus is not supported by any congressional find-

3. Even if the legislative history were less clear than it is, this Court should be reluctant to adopt petitioner's interpretation that the PDA was intended to provide a special benefit for working women. As the most comprehensive federal fair employment statute ever enacted, Title VII invests in all workers, men as well as women, the right to be free of discriminatory treatment in the work place. It prohibits the employment of men, as well as women, under terms and conditions less favorable than those accorded similarly-situated members of the opposite sex and, conversely, forbids preferential treatment of women as well as men on the basis of their sex. Petitioner's position, that the PDA amendment of Title VII's definition of sex discrimination applies only to claims of women workers, would distort the fundamental anti-discrimination principles upon which Title VII is founded.

---

ing. It is also wholly without record support in this case. We do not, of course, contend that the cost of non-discriminatory coverage for spousal pregnancy is de minimis. However, as Congressman Hawkins stated in the debate on the PDA, 123 Cong. Rec. 10583 (1977); Leg. Hist. 26:

> The main argument raised against prohibiting pregnancy-related discrimination is that it will be costly. But eradicating invidious discrimination by definition costs money: It is cheaper to pay all black workers less than all white workers, or all women less than all men. The fact that it would cost employers money did not prevent Congress from enacting the Equal Pay Act or title VII, and it should not prevent this Congress from making clear that title VII prohibits this form of sex discrimination as well.

And, of course, employers are now free to adjust the benefits or contributions associated with their medical insurance plans in a non-discriminatory fashion. See Section 3 of the Act, Pub. L. No. 95-555, 92 Stat. 2076 (Pet. App. 51a).

As this case demonstrates, men as well as women workers may be disadvantaged by employers' policies or programs that treat pregnancy less favorably than other medical conditions or disabilities. Under petitioner's view, the PDA extends protection from such pregnancy-based discrimination to women employees while withholding the same protection from their male colleagues. It is most unlikely that Congress, in a simple definitional amendment to Title VII, would have mandated this special, preferential treatment which is contrary to the basic principles of the underlying law. Indeed, given the inconsistency of such a requirement with the underlying purpose of Title VII, it would be appropriate for a court to require a clear statement in the statute itself of any such purpose, or, at the very least, unambiguous legislative history explaining the legislative intent to create an exception to the basic statutory purpose. *County of Washington* v. *Gunther*, 452 U.S. 161, 178 (1981). No such explanation exists here. Instead, as we have shown, the legislative history clearly indicates that the clarified definition is to be read harmoniously with the basic principles of Title VII, and indeed that Congress anticipated that an employer's plan providing medical benefits to dependents would not treat spousal pregnancies less generously than other disabilities.

III. THE CONTEMPORANEOUS ADMINISTRATIVE INTERPRETATION OF THE PDA IS ENTITLED TO SUBSTANTIAL JUDICIAL DEFERENCE

The EEOC is the agency charged by Congress with the interpretation and administration of the PDA. Its contemporaneous construction of the Act's impact on Title VII with respect to the provision of medical insurance coverage for spousal pregnancy is set forth in the Appendix to its interpretative regulations (29

C.F.R. 1604) as Questions and Answers 21 and 22, which was issued seven months after passage of the PDA and several days before its effective date with regard to such fringe benefits as health insurance plans (see p. 3 & n.2, *supra*). Great weight should be given to that construction. *EEOC* v. *Associated Dry Goods Corp.*, 449 U.S. 590, 600 n.17 (1981). Indeed, to sustain an agency's interpretation of the statute for which it is responsible, a court " 'need not find that [the agency's] construction is the only reasonable one, or even that it is [a] result [the court] would have reached had the question arisen in the first instance in judicial proceedings.' " *Udall* v. *Tallman*, 380 U.S. 1, 16 (1965), quoting *Unemployment Comm'n* v. *Aragon*, 329 U.S. 143, 153 (1946). Rather, that interpretation must be sustained absent "compelling indications that it is wrong." *Miller* v. *Youakim*, 440 U.S. 125, 144-145 n.25 (1979); *Espinoza* v. *Farah Mfg. Co.*, 414 U.S. 86, 94-95 (1973). Moreover, judicial deference is particularly appropriate here, because the head of EEOC informed the Congress of the agency's construction of the statute—stated in the Questions and Answers and urged here—while the PDA was still under consideration, and that construction was not challenged (see pp. 25-26, *supra*). *Zuber* v. *Allen*, 396 U.S. 168, 192-193 (1969); accord *Power Reactor Development Co.* v. *Int'l Union of Electrical Workers*, 367 U.S. 396, 409 (1961); *Baltimore & O. C.T.R.R.* v. *United States*, 583 F.2d 678, 684 (3d Cir. 1978), cert. denied, 440 U.S. 968 (1979).

Nothing in petitioner's extended attack on the EEOC's interpretation (Pet. Br. 32-41) lessens the weight to which it is entitled. The alleged inconsistencies between Questions and Answers 21 and 22, the Senate Report, and the EEOC's 1972 sex discrimina-

tion guideline (29 C.F.R. 1604.9(d)) to which petitioner points (Pet. Br. 33-36) are illusory. Answer 21 states that "if an employer's insurance program covers the medical expenses of spouses of female employees, then it must equally cover the medical expenses of spouses of male employees, including those arising from pregnancy-related conditions." Answer 22 reiterates this principle, while making clear that "it is not necessary to provide the same level of coverage for the pregnancy-related medical conditions of spouses of male employees as for female employees." Contrary to petitioner's claim (Pet. Br. 34-36), this position is obviously consistent with the statement in the Senate Report that the PDA "would not mandate that women dependents be compared with women employees, or that male employees with pregnant wives be compared with women employees themselves pregnant." S. Rep. No. 95-331, *supra*, at 6; Leg Hist. 43. The thrust of both is that comparable insurance coverage must be provided to employees with respect to their own coverage, and with respect to that provided to their families.

The opening clause of 29 C.F.R. 1604.9(d), which prohibits unequal treatment of employees with respect to receipt of benefits for dependents,[34] is likewise

---

[34] Section 1604.9(d) provides in full that:

> It shall be an unlawful employment practice for an employer to make available benefits for the wives and families of male employees where the same benefits are not made available for the husbands and families of female employees; or to make available benefits for the wives of male employees which are not made available for female employees; or to make available benefits to the husbands of female employees which are not made available for male employees. An example of such an unlawful employment practice is a situation in which wives of male

consistent with the Senate Report's emphasis on comparison between employees and not between employees and spouses. The guideline further states that it is unlawful "to make available benefits for the wives of male employees which are not made available for female employees," *e.g.*, to provide that "wives of male employees [will] receive maternity benefits while female employees receive no such benefits." This provision addresses an historical practice of invidious discrimination against women workers that the Senate Report also characterized as invalid under the PDA:

> Information presented to this committee revealed that * * * otherwise comprehensive medical plans have sometimes provided maternity coverage to wives of employees but not to women employees * * * which practice[] would clearly be invalid under this bill * * *.

S. Rep. No. 95-331, *supra*, at 6; Leg. Hist. 43.

Equally without merit is petitioner's argument that the Commission misapplied "existing Title VII principles" in explaining the rationale of Questions and Answers 21 and 22 at the time of their publication in final form (Pet. Br. 37-39). As we have shown (pp. 23-24, *supra*), petitioner's insistence that *Gilbert* "establishes the only pertinent 'Title VII principles'" (Pet. Br. 37) is erroneous.[35] Petitioner's additional

---

employees receive maternity benefits while female employees receive no such benefits.

[35] Petitioner also claims that our initial explanation of Questions and Answers 21 and 22, as incorporating existing Title VII principles, is "flatly contradicted" by our position here that spousal pregnancy coverage "is mandated * * * by the

charge that the Commission's position requiring equal benefits for employees of both sexes regardless of costs is an "anomaly" because, *inter alia*, the Department of Labor requires only equal benefits or contributions under the Equal Pay Act (Pet. Br. 37 and n.46), ignores the fact that this Court expressly rejected the Department of Labor's interpretation in *Los Angeles Dep't of Water and Power* v. *Manhart*, *supra*, 435 U.S. at 714 n.26.[36]

PDA itself." (Pet. Br. 39). This is plainly wrong. The rationale underlying our initial explanation, and which underlies our position in this Court, rests on substantive Title VII precepts operating in conjunction with our interpretation of the PDA, *i.e.*, that Title VII as amended by the PDA applies to all claims of discrimination, submitted by men or women, involving pregnancy, that dependent health coverage is a benefit for employees, and that lesser defendant coverage for employees of one sex than for those of the other sex is unlawful. See pp. 8-10, *supra*.

The fact that there are no pre-PDA cases in which the practice at issue here was litigated obviously does not mean, as petitioner suggests (Pet. Br. 40 n.49), that the practice was perceived as lawful. As Justice Brennan pointed out in his dissent in *General Electric Co.* v. *Gilbert*, *supra*, 429 U.S. at 155-158, the relationship between sex discrimination and pregnancy was "an admittedly complex problem" which the EEOC definitively resolved only in 1972. Four years later, this Court in *Gilbert* denied any such relationship even with respect to discrimination against women employees. The dearth of agency or judicial attention to discriminatory spousal pregnancy coverage under medical insurance plans is, therefore, understandable.

[36] The Department of Labor subsequently proposed amending its interpretation (29 C.F.R. 800.116(d)) to conform with the EEOC's requirement (29 C.F.R. 1604)—cited with approval in *Manhart* (435 U.S. at 720 n.37)—that benefits must be equal regardless of cost. See 46 Fed. Reg. 38029 (1981). Prior to publication of the amendment in final form, Equal

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

REX E. LEE
Solicitor General

LAWRENCE G. WALLACE
Deputy Solicitor General

HARRIET S. SHAPIRO
Assistant to the Solicitor General

MICHAEL N. MARTINEZ
Deputy General Counsel

PHILIP B. SKLOVER
Associate General Counsel

VELLA M. FINK
Assistant General Counsel

SUSAN BUCKINGHAM REILLY
Attorney
Equal Employment Opportunity Commission

MARCH 1983

Pay Act enforcement authority was transferred to the EEOC, which has proposed the same amendment. See 29 C.F.R. 1620.5 (1981), 46 Fed. Reg. 43848, 43851 (1981). Petitioner's citation to the regulation of the Department of Labor's Office of Federal Contract Compliance Programs (Pet. Br. 37 n.48) similarly ignores the fact that that office has likewise proposed changing its regulation to require that fringe benefits for employees of both sexes must be equal. See 46 Fed. Reg. 42968, 42971 (1981) (41 C.F.R. 60-1.21); 41 C.F.R. 60-20.3(c) (1982).

☆ U. S. GOVERNMENT PRINTING OFFICE: 1983 399777 1291